

PT 01-26

Tax Type: Property Tax

Issue: Government Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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UNITED STATES  
POSTAL SERVICE,  
APPLICANT

v.

ILLINOIS DEPARTMENT  
OF REVENUE

Nos.

00-PT-0022

(95-16-1149)

P.I.N.S:

10-30-107-019

10-30-107-020

10-30-107-021

10-30-107-023

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**RECOMMENDATION FOR DISPOSITION**  
**PURSUANT TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

**APPEARANCE:** Mr. Cary L. Katznelson, Senior Attorney on behalf the United States Post Office (hereinafter the "applicant" or the "USPO").

**SYNOPSIS:** This matter comes to be considered pursuant to applicant's motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the "Department") issued a determination in this matter on February 25, 2000. Said determination found that real estate identified by Cook County Parcel Index Numbers 10-30-107-019, 10-30-107-020, 10-30-107-021 and 10-30-107-023 (hereinafter collectively referred to as the "subject property"), was not in exempt ownership, and therefore did not qualify for exemption from 1995 real estate taxes under Section 15-50 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* (hereinafter the "Code"). At issue herein is whether the subject property qualified as "property of the

United States,” within the meaning of 35 ILCS 200/15-50 at any point during the 1995 assessment year.

The controversy arises as follows:

Applicant filed a Real Estate Exemption with the Cook County Board of Review (hereinafter the "Board") on May 10, 1996. The Board reviewed applicant's complaint and subsequently recommended to the Department that the subject property be exempt as of November 9, 1995. The Department, however, rejected this recommendation by issuing a determination, dated February 25, 2000, which found that the subject property was not in exempt ownership. Applicant filed a timely appeal to this denial and then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that applicant's motion be granted as to the improved portion of the subject property, but only for 23% of the 1995 assessment year which transpired on or after October 9, 1995.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein are established by the determination issued by the Office of Local Government Services on February 25, 2000, which found as follows:

- The property is not in exempt ownership.
- The post office seeks exemption of only an improvement it built on leased land. Real property includes both land and buildings. A building is assessable as part of the land on which it is located. Exempt status is denied because the Post Office does not own the property as required by Section 15-50 of the Property Tax Code.

Administrative Notice

2. The USPO is an “independent establishment of the executive branch of the Government of the United States,” established and organized pursuant to 39 U.S.C.A. § 102, *et seq.*<sup>1</sup> Administrative Notice.
3. The Application for Property Tax Exemption which applicant filed in connection with this matter indicates that the subject property is located at 6977 W. Oakton Street, Niles IL and improved with a 14,728 square foot post office facility.
4. The USPO initially obtained a leasehold interest in the subject property pursuant to the terms of an assignable ground lease dated April 26, 1974. This ground lease provided, in substance, that:
  - Applicant was to pay various sums certain to the lessor, LaSalle National Bank (hereinafter the “Bank”), throughout the 20 year term of the lease;
  - The USPO was expressly authorized to assign its interest in the lease to a “tenant[;]” and,
  - Applicant’s “tenant” was to possess and enjoy quiet enjoyment of the property throughout the term of the lease, on the express condition that applicant’s “tenant” was to enjoy such rights for the limited purpose of constructing a postal facility that satisfied applicant’s specifications.

Applicant Motion Ex. A.

5. Pursuant to authority granted to it in the assignable ground lease, applicant executed a “lease agreement” with C & B, Ltd. (hereinafter “C & B”) on April 15, 1976. Applicant entered into this lease for the express purpose of enabling C & B to construct a postal facility on the subject property. Applicant Motion Ex. B.

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1. The provision actually establishing applicant as part of the executive branch of the United States Government is found in 39 U.S.C.A. § 201.

6. The “lease agreement” provided, *inter alia*, that:

- C & B would lease back the completed improvement to applicant for an initial term of 20 years that would expire on February 29, 1996;
- Applicant could opt to renew the lease for two successive five year periods;
- Applicant was to pay C & B various sums certain as rent throughout both the initial term and any renewal periods of the lease;
- The terms and conditions set forth in the ground lease dated April 26, 1974 were incorporated by reference into the “lease agreement[;]” and,
- Applicant expressly assumed liability for paying any real estate taxes levied against the subject property throughout the entire term of the lease.

Applicant Motion Ex. B.

7. The Village of Niles (hereinafter the “Village”) obtained the Bank’s interest in the ground lease pursuant to an eminent domain action filed on June 18, 1987. Applicant Motion Ex. C.

8. The Village applied for and received a Real Estate Tax Exemption Certificate<sup>2</sup> for the subject property upon conclusion of the eminent domain proceeding. This certificate, issued by the Department’s Office of Local Government Services on December 7, 1989, listed the Village as property owner but mentioned nothing about applicant’s leasehold interest or the exempt status thereof. Applicant Motion Ex. No. D; Administrative Notice.

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2. The docket number for this exemption certificate was 88-16-607. Administrative Notice.

9. Records of the Cook County Assessor indicate that the subject property was exempt from real estate taxation during all tax years from 1991 through 1999. Applicant Motion Ex. F.
10. Neither applicant nor the Village paid any real estate taxes while the subject property was exempt. Applicant did, however, honor its written commitment to pay any and all real estate taxes levied against the subject property for tax years prior to 1991. Applicant Motion Ex. E.
11. Real Properties MLP Limited Partnership (hereinafter “MLP”), one of numerous successors in interest to C & B entered into a purchase and sale agreement with applicant on June 27, 1995. This agreement provided, in substance, that MLP would sell and transfer to applicant all of its right, title and interest in numerous parcels of real estate, including the subject property. Applicant Motion Ex. G.
12. On October 9, 1995, MLP, as assignor, and applicant, as assignee, executed an “Assignment and Assumption of Ground Lease” which provided, in relevant part, that:

Assignor hereby assigns and transfers to Assignee all of Assignor’s right, title and interest in and to the Ground Lease [dated April 26, 1974] and the leasehold estate,<sup>3</sup> which assignment shall include, but shall not be limited to, all of the Assignor’s right, title, and interest in the buildings and improvements located on the [subject] Property. Assignee hereby accepts the foregoing assignment and assumes and promises to perform all of the obligations of Assignor under the Ground Lease [as of and after October 9, 1995], including all obligations under the ground lease, if any, to maintain or repair any portion of the [subject] Property and the improvements thereon.

Applicant Motion Ex. No. 8.

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3. This is a reference to the “lease agreement” dated April 15, 1976, which expressly incorporated by reference the terms and conditions set forth in the original ground lease.

## **CONCLUSIONS OF LAW:**

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no genuine issues of material fact in this case. Therefore, the issue for decision herein necessarily becomes one of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2<sup>nd</sup> Dist. 1987). That issue is, precisely stated, whether the USPO held any legally cognizable ownership interest in any part of the subject property during 1995.

Federal statutes create the USPO as an “independent establishment of the executive branch of the Government of the United States.” *See*, 39 U.S.C.A. § 102, *et seq.* Property owned by the United States Government is immune from state and local taxation under the supremacy clause of the United States Constitution. U.S. Const. art. VI, clause 2. This immunity arises from the necessity for preserving the independence of the dual system of federal and state governments under our constitutional system. McCulloch v. Maryland 17 U.S. (4 Wheat) 316 (1819). Hence, real property of the federal government and its instrumentalities is immune from state or local taxation except to the extent permitted by congressional action. City of Detroit v. Murray Corporation of America, 355 U.S. 489 (1958); Moline Water Power Co. v. Cox, 252 Ill. 348 (1911).

In order to effectuate federal immunity, the General Assembly enacted Section 200/15-50 of the Property Tax Code (35 ILCS 200/1-1 *et seq*), wherein “[a]ll property of the United States” is exempted from real estate taxation, “except such property as the United States has permitted or may permit to be taxed.” 35 ILCS 200/15-50.

All property tax exemptions, including those granted to the federal government, are inherently injurious to public funds because they impose lost revenue costs on taxing bodies. For this reason, Section 15-50 and all other statutes exempting property from taxation are to be strictly construed, with all factual doubts and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Moreover, it is applicant's burden to prove by clear and convincing evidence that the relevant exemption statute applies.

Here, the relevant statute is contained in Section 15-50 of the Property Tax Code, 35 ILCS 200/15-50. The preposition "of," which appears in the first clause of Section 15-50, connotes an ownership requirement (Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968)) that is not modified by any use language. Therefore, the sole basis for this particular exemption is ownership. Public Building Commission of Chicago v. Continental Illinois National Bank & Trust Company of Chicago, 30 Ill. 2d 115 (1963). Nevertheless, the waiver language that appears in the last clause of Section 15-50 demonstrates that this exemption is not absolute because the federal government may "permit" its property to be taxed.

The USPO manifested its permission for this particular subject property to be taxed, and thereby waived its federal immunity with respect thereto, by entering into the "lease agreement" with C & B, Ltd. on April 15, 1976. This agreement specifically provided, *inter alia*, that applicant would assume liability for any property taxes levied against the subject property. Applicant performed on this agreement by paying all such

taxes until its obligation was terminated by operation of the property tax exemption granted to the Village of Niles on December 7, 1989.

This exemption provided the Village with an exemption for its underlying fee interest in the subject property, which it obtained via the condemnation proceeding. Because that ownership interest remained intact throughout the 1995 assessment year, it is legally impossible for applicant, which *never* owned *any* part the fee interest throughout *any* of the transactions that gave rise to this proceeding, to obtain an exemption for that fee interest herein. Therefore, the true sources of controversy in this case are: (1) whether applicant ever obtained any ownership interest in the *improved* portion of the subject property during any part of the 1995 assessment year; (2) whether applicant is entitled to obtain an exemption for whatever ownership interest that it may have obtained in that improvement; and, (3) whether any such exemption should be pro-rated to account for periods of non-exempt ownership.

Resolving the first inquiry requires one to recognize that the Assignment and Assumption of Ground Lease was the only transaction that affected a material alteration in the state of title for the improvement. The terms of this transaction enabled MLP, which had previously held the landlord's interest in the improvement, to transfer all of its right, title and interest therein to the applicant as of October 9, 1995. By doing so, MLP completely extinguished whatever interest it held in the improvement and placed applicant in ownership thereof by fusing the dichotomy of legal interests which existed prior to the date of the assignment.

Applicant held only a leasehold interest in the improvement while that dichotomy was in effect. Such an interest is, by its very nature, legally insufficient to satisfy the



exempt ownership requirement contained in Section 15-50. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497, 501-502 (1st Dist. 1983) (denying exemption to property leased to applicant-village on grounds that property did not satisfy statutory exempt ownership requirement). Therefore, as a matter of law, applicant is not entitled to receive an exemption for the improvement throughout the entire period when it held that leasehold interest.

Applicant is nevertheless entitled to an exemption for its post-assignment interest in the improvement. In City of Chicago v. Department of Revenue, 147 Ill.2d 484 (1992), the Illinois Supreme Court held that two building improvements owned by the City of Chicago could be separately exempted from the underlying land which the City subleased from Kraft, a private corporation. The facts pertaining to applicant's post-assignment interest in the improvement are virtually identical to those held exempt in City of Chicago because the City's property, like that of the USPO, is exempt solely by virtue of the City's ownership interest therein.<sup>4</sup> Accordingly, applicant should receive an exemption which reflects that the improvement was in exempt ownership as of the date of the assignment.

That exemption is awarded pursuant to Section 9-185 of the Property Tax Code which states, in pertinent part, that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by

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4 . Section 15-60(c) of the Property Tax Code provides for the exemption of "all property owned by any city or village located within its incorporated limits." 35 **ILCS** 200/15-60(c). The sole criterion for this particular exemption is, therefore, ownership. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497, 501-502 (1st Dist. 1983).

condemnation is exempt as of the date the condemnation petition is filed.

35 **ILCS** 200/9-185.

The Assignment and Assumption of Ground Lease proves that applicant obtained its ownership interest in the improvement on October 9, 1995. Hence, Section 9-185 mandates that applicant is entitled to judgment as a matter of law herein, but only to the very limited extent that such judgment indicate that the improvement was in exempt ownership only for that 23% of the 1995 assessment year which transpired on or after October 9, 1995. Therefore, the Department's determination in this matter should be modified to reflect such relief.

WHEREFORE, for the reasons set forth above, I recommend that:

- A. Pursuant to Section 15-50 of the Property Tax Code (35 **ILCS** 200/15-50), the applicant, the United States Post Office, be granted a real estate tax exemption for its ownership interest in the building improvement situated on real estate identified by Cook County Parcel Index Numbers 10-30-107-019, 10-30-107-020, 10-30-107-021 and 10-30-107-023; but,
- B. Pursuant to Section 9-185 of the Property Tax Code (35 **ILCS** 200/9-185), said exemption be strictly limited to 23% of the 1995 assessment year.

May 17, 2001 \_\_\_\_\_

Date

Alan I. Marcus  
Administrative Law Judge